

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

GREGORY SMITH	:	
	:	
Plaintiff,	:	Case No. 2:21-cv-03898
	:	
vs.	:	Judge Sarah D. Morrison
	:	
CITY OF NELSONVILLE, OHIO, et al.	:	Magistrate Judge Kimberly A. Jolson
	:	
Defendants.	:	

**DEFENDANTS' SUPPLEMENTAL MEMORANDUM IN OPPOSITION
PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER**

A. The Sixth Circuit has upheld residency requirements for politicians.

In *Akron v. Bell*, the Sixth Circuit Court of Appeals upheld a similar residency requirement for politicians. 660 F. 2nd 166 *7-9 (6th Cir.1981). The Court found that having politicians live in the communities in which they serve was constitutional. *Id.*

B. This Court should abstain from intervening in the upcoming hearing of the Nelsonville City Council.

In essence, Plaintiff is attempting to prevent an adjudicatory body – the Nelsonville City Council – from considering his removal under its city charter. *See* Nelsonville City Charter, § 11.08(B)(1), PAGEID # 245 (providing for removal proceedings of city councilmembers). The *Younger* abstention doctrine is clear that federal courts should not interfere with various state proceedings. *E.g., Middlesex Cty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 431, 102 S.Ct. 2515 (1982). *See generally Younger v. Harris*, 401 U.S. 37, 45 (1971). Notably, the Sixth Circuit upheld *Younger* abstention when a plaintiff sought to enjoin a state medical licensing hearing. *Youssef v. Schuette*, 2019 U.S. App. LEXIS 27958, *6 (6th Cir.2019).

Here, because Plaintiff seeks to interfere with a state administrative hearing, the Court should exercise *Younger* abstention. *See Middlesex; Younger*. Further, Plaintiff's removal proceeding is ongoing – he filed the Motion for Temporary Restraining Order hours after the Defendants noticed the removal proceeding. *See Youssef*, 2019 U.S. App. LEXIS 27958, *6 (noting the plaintiff filed suit while licensing proceedings were ongoing). Second, Plaintiff's removal implicates a clear state interest in ensuring elected officials reside in the jurisdictions they represent. *See generally* R.C. 731.02; *see Loveless v. Cipher Bd. of Election*, 2004 U.S. Dist. LEXIS 18832 at *8-9 (providing “carpet bagging” is a rational basis for upholding a residency requirement for politicians) (N.D. Ill. 2004).

Finally, Plaintiff, who is not otherwise barred from doing so, has an adequate opportunity to raise his constitutional claims. *See Nelsonville City Charter*, § 11.08(F), PAGEID # 246 (“Council shall appoint a Special Prosecutor who shall prosecute the removal proceedings before the Council and any **reviews thereof by the Courts.**”) (emphasis added). As such, *Younger* abstention is applicable. *See Youssef*.

Respectfully submitted,

/s/ Patrick Kasson

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CERTIFICATE OF SERVICE

I hereby certify a true and accurate copy of the foregoing document was served via the Court's electronic filing system and/or electronic mail on this 23rd day of August, 2021 upon:

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